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10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 ROLAND ZITA
9300 Wilshire Boulevard, Suite 300
14 Beverly Hills, CA 90212

15 Certified Public Accountant
Certificate No. 57042,

16 and
17

18 ROLAND ZITA CERTIFIED PUBLIC
ACCOUNTANT A PROFESSIONAL CORP.
9300 Wilshire Boulevard #300
19 Beverly Hills, CA 90212

20 CPA Corporation Permit Number 3929,

21 Respondents.
22

Case No. AC-2004-31

OAH No. 200740356

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true;

25 **PARTIES**

26 1. Carol Sigmann (Complainant) is the Executive Officer of the California
27 Board of Accountancy. She brought this action solely in her official capacity and is represented
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1 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, and by
2 Diann Sokoloff, Deputy Attorney General.

3 2. Roland Zita and Roland Zita Certified Public Accountant, A Professional
4 Corporation (Respondents) are represented in this proceeding by Robert Denton of Lurie,
5 Zepeda, Schmaltz & Hoganand.

6 3. On or about September 8, 1990, the California Board of Accountancy
7 issued Certified Public Accountant Certificate Number CPA 57042 to Respondent. The
8 certificate is currently valid and will expire on November 30, 2008, unless renewed.

9 4. On or about September 14, 1993, the California Board of Accountancy
10 issued CPA Corporation Permit Number COR 3929 to Respondent, as Roland Zita Certified
11 Public Accountant A Professional Corp.^{1/} The certificate is currently valid and will expire on
12 September 30, 2007, unless renewed.

13 **JURISDICTION**

14 5. First Amended Accusation No. AC-2004-31 was filed before the
15 California Board of Accountancy (Board), Department of Consumer Affairs, and is currently
16 pending against Respondent. The Accusation and all other statutorily required documents were
17 properly served on Respondent on or about August 28, 2006. Respondent timely filed the Notice
18 of Defense contesting the Accusation. A copy of First Amended Accusation No. AC-2004-31 is
19 attached as Exhibit A and incorporated herein by reference.

20 **ADVISEMENT AND WAIVERS**

21 6. Respondent has carefully read, fully discussed with counsel, and
22 understands the charges and allegations in First Amended Accusation No. AC-2004-31.
23 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
24 this Stipulated Settlement and Disciplinary Order.

25 7. Respondent is fully aware of his legal rights in this matter, including the
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27 1. The use of "Respondent" here and hereafter refers to Roland Zita as the holder of both
28 the individual CPA certificate and the corporate license.

1 right to a hearing on the charges and allegations in the First Amended Accusation; the right to be
2 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
3 against him; the right to present evidence and to testify on his own behalf; the right to the
4 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
5 the right to reconsideration and court review of an adverse decision; and all other rights accorded
6 by the California Administrative Procedure Act and other applicable laws.

7 8. Respondent voluntarily, knowingly, and intelligently waives and gives up
8 each and every right set forth above.

9 **CULPABILITY**

10 9. Respondent understands and agrees that (1) the charges and allegations set
11 forth in First Amended Accusation No. AC-2004-31, if proven at a hearing, constitute cause for
12 imposing discipline upon his California Public Accountancy Certificate and (2) should he face
13 discipline in the future, these current charges will not be contested.

14 10. Respondent agrees that his Certified Public Accountant Certificate
15 Number CPA 57042 and his CPA Corporation Permit Number COR 3929 are subject to
16 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
17 Disciplinary Order below.

18 **CONTINGENCY**

19 11. This stipulation shall be subject to approval by the California Board of
20 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of
21 the California Board of Accountancy may communicate directly with the Board regarding this
22 stipulation and settlement, without notice to or participation by Respondent. By signing the
23 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
24 to rescind the stipulation prior to the Board meeting when the Board considers this stipulation. If
25 the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
26 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
27 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
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12. The parties stipulate that, for the purpose of cost recovery under Code Section 5107, the Board's reasonable costs of investigation and prosecution in this matter will not exceed \$120,000.00 and a statement of costs actually billed and thus owing by Respondent will be provided to Respondent upon adoption of this Stipulated Settlement and Order. In consideration of Respondent's stipulation to license revocation, the Board will not seek reimbursement of related and accrued investigative and prosecution costs in this matter, except in connection with any petition for reinstatement as set forth below. The Board will not accept for its consideration a petition for reinstatement (or any other application for licensure) from Respondent unless cost recovery in this case has been satisfied according to the provisions of Code Section 5107 or pursuant to agreement with the Board and/or its designees.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that Certificate Number CPA 57042 and CPA Corporation Permit Number COR 3929 issued to Respondent Roland Zita are each revoked, subject to the following circumstances:

2. **Petition for Reinstatement.** Respondent may not petition for license reinstatement for at least three years from the effective date of the Stipulated Settlement and

1 Disciplinary Order.

2 3. **Cost Reimbursement.** As provided in this stipulation, the Board shall
3 require payment of its investigation and enforcement charges associated with this proceeding
4 prior to its accepting for its consideration a petition for reinstatement or application for licensure.

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ACCEPTANCE


I have carefully read the Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. I understand the stipulation and the effect it will have on my Certificate Number CPA 57042 and CPA Corporation Permit Number COR 3929. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 7-9-07.


ROLAND ZITA
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

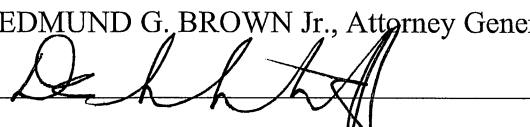
DATED: 7-9-07.


ROBERT DENTON
Lurie, Zepeda, Schmaltz & Hoganand
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 7/10/07.

EDMUND G. BROWN Jr., Attorney General

DIANN SOKOLOFF
Deputy Attorney General
Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ROLAND ZITA
9300 Wilshire Boulevard, Suite 300
Beverly Hills, CA 90212

Certified Public Accountant
Certificate No. 57042,

and

ROLAND ZITA CERTIFIED PUBLIC
ACCOUNTANT A PROFESSIONAL CORP.
9300 Wilshire Boulevard #300
Beverly Hills, CA 90212

CPA Corporation Permit Number 3929,

Respondents.

Case No. AC-2004-31

OAH No. 200740356

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 3, 2007.

It is so ORDERED October 4, 2007.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A
Accusation No. AC-2004-31

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANN SOKOLOFF, State Bar No. 161082
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 21st Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2226
Facsimile: (510) 622-2270
6
7 Attorneys for Complainant

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC 2004-31

12 ROLAND ZITA
9300 Wilshire Boulevard, Suite 300
13 Beverly Hills CA 90212

FIRST AMENDED ACCUSATION

14 Certified Public Accountant
Certificate No. 57042,

15 and

16 ROLAND ZITA CERTIFIED PUBLIC
17 ACCOUNTANT A PROFESSIONAL CORP.
9300 Wilshire Boulevard #300
18 Beverly Hills CA 90212

19 CPA Corporation Permit Number 3929,

20 Respondents.

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22 Complainant alleges:

23 **PARTIES AND JURISDICTION**

24 1. The Complainant herein, Carol Sigmann, brings this First Amended Accusation
25 under Business and Professions Code section 5100 solely in her official capacity as the Executive
26 Officer of the California Board of Accountancy, Department of Consumer Affairs. This First
27 Amended Accusation, hereinafter "Accusation," replaces the Accusation on file herein *nunc*
28 *pro tunc*.

1 2. On or about September 8, 1990, the California Board of Accountancy issued
2 Certified Public Accountant Certificate Number 57042 to Roland Zita, Respondent. The
3 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
4 charges brought herein and is valid through November 30, 2006.

5 3. On or about September 14, 1993, the California Board of Accountancy issued
6 CPA Corporation Permit Number 3929 to Respondent,¹ as Roland Zita Certified Public
7 Accountant A Professional Corp.² The corporate permit was expired from July 1, 1996 to March
8 18, 1998, and again from July 1, 1998 to July 1, 2001, during which time Respondent rendered
9 services under his corporate name, as set forth more particularly hereinafter. The Corporation
10 Certificate is currently renewed and is valid through September 30, 2007.

11 4. This Accusation is brought before the Board under the authority of Business and
12 Professions Code section 5100,³ which provides, in relevant part, that, after notice and hearing
13 the board may revoke, suspend or refuse to renew any permit or certificate granted, or may
14 censure the holder of that permit or certificate, for unprofessional conduct which includes, but is
15 not limited to, one or any combination of the causes specified therein, including those in the
16 following subparagraphs:

17 5100 (g) Willful violation of this chapter or any rule or regulation promulgated by
18 the board under the authority granted under this chapter.

19 5100 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

20 5100 (j) Knowing preparation, publication, or dissemination of false, fraudulent, or
21 materially misleading financial statements, reports, or information.

22 1. The use of "Respondent" herein refers to Roland Zita as the holder of both the
23 individual CPA certificate and the corporate license.

24 2. Corporations Code section 13401 provides definitions governing professional
25 corporations under the "Moscone-Knox Professional Corporation Act." Corporations providing
26 "professional services" must register (with the Secretary of State) as a corporation, and such
27 corporations are, in turn, required to be registered (licensed) by the Board under Business and
28 Professions Code sections 5150 and 5151.

 3. All statutory references are to the Business and Professions Code unless otherwise
indicated.

1 5100 (k) ... (M)isappropriation of funds or property, or obtaining money, property,
2 or other valuable consideration by fraudulent means or false pretenses.

3 5. Code sections 5150 and 5151 provide for the registration of accountancy
4 corporations, and Code section 5156 provides that an accountancy corporation may be
5 disciplined for unprofessional conduct, including any of the above specific causes for discipline.

6 6. Board Rule 58 (Title 16, Cal. Code Regs., § 58) requires that a licensee comply
7 with all applicable professional standards. Among professional standards relevant at the time
8 were:

9 A. Section 10.22 of U.S. Department of the Treasury, Internal Revenue Service,
10 Circular 230 required that an individual practicing before the Internal Revenue Service exercise
11 "due diligence" in the following three areas:

12 Preparing, assisting, approving and/or filing returns and other documents with the
13 Service;

14 Determining the correctness of oral and written representations made by the practitioner
15 to the Treasury; and

16 Determining the correctness of oral and written representations made by the practitioner
17 to the client with reference to any matter administered by the Service.

18 B. The American Institute of Certified Public Accountants (AICPA) *Code of*
19 *Professional Conduct* includes Section I - Principles and Section II - Rules. Both the Principles
20 (Articles III and VI) and the Rules (Rule 102, rule 501) are relevant to the allegations herein.
21 For example, Rule 102 (Integrity and Objectivity), provides that:

22 "In the performance of any professional service, a member shall maintain
23 objectivity and integrity, shall be free of conflicts of interest, and shall not
24 knowingly misrepresent facts or subordinate his or her judgment to others."

25 7. Board Rule 57 (Title 16, Cal. Code Regs., § 57) provides that a licensee may not
26 concurrently engage in the practice of public accountancy and in any other business or
27 occupation which impairs the licensee's independence, objectivity, or creates a conflict of
28 interest in rendering professional services.

 8. Code sections 118(b) and 5109 provide in pertinent part that the suspension,
 expiration, cancellation, or forfeiture of a license issued by the Board shall not, deprive the Board
 of its authority to investigate, or to institute or continue a disciplinary proceeding against, a

1 licensee upon any ground provided by law, or to enter an order suspending or revoking the
2 license or otherwise taking disciplinary action against the licensee on any such ground.

3 9. Code section 5107 provides for recovery by the Board of all reasonable costs of
4 investigation and prosecution of the case, including, but not limited to, attorney's fees. A
5 certified copy of the actual costs, or a good faith estimate of costs signed by the Executive
6 Officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of
7 the case.

8 10. Code section 5000.1 provides as follows: "Protection of the public shall be the
9 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
10 and disciplinary functions. Whenever the protection of the public is inconsistent with other
11 interests sought to be promoted, the protection of the public shall be paramount."

12 CAUSES FOR DISCIPLINE

13 11. Respondent is subject to disciplinary action for multiple acts of unprofessional
14 conduct under Business and Professions Code section 5100, as set forth below. The
15 circumstances follow.

16 CIRCUMSTANCES SUPPORTING THE IMPOSITION OF DISCIPLINE

17 12. Respondent's Tenure as Mrs. Louise Clark's CPA. The unprofessional conduct
18 upon which the charges in this Accusation are based occurred during Respondent's tenure as
19 CPA for Mrs. Louise Black Clark. In 1991 or 1992, Respondent was introduced to Mrs. Clark
20 (then widowed) by Edward Stone, who had been Mrs. Clark's husband's longtime CPA, and was
21 a trusted advisor to both Clarks, serving as a successor co-trustee for Mr. Clark's trust. Under
22 Mr. Stone's direction, Respondent began performing work, primarily tax preparation, for Mrs.
23 Clark.⁴ In mid-1993, upon Mr. Stone's death, Respondent assumed sole responsibility as Mrs.
24 Clark's CPA. In September 1993, Respondent formed a professional corporation and obtained a

25
26 4. Respondent had been employed as a staff accountant at Eric Steinwald Accountancy
27 Corp. from June 1984 to approximately April 1989. According to Respondent, Respondent
28 worked for a time for Mr. Stone through the Steinwald partnership. After leaving the
partnership firm in approximately 1989, Respondent continued to work for Mr. Stone as an
independent contractor, in which capacity he was working when introduced to Mrs. Clark.

1 permit to conduct his public accountancy practice as a corporation, under which auspices he
2 provided services to Mrs. Clark from September, 1993 until his dismissal in late 1998.

3 13. Mrs. Clark and Her Family/Support System. Mrs. Clark was born on January 6,
4 1906. Mrs. Clark's husband, Roger Clark, died in October 1978. During the entire period
5 relevant herein, Mrs. Clark lived alone in her home in Ojai, California, a community some 60-
6 plus miles northwest of Los Angeles in Ventura County. Mrs. Clark's only family members
7 lived in Oregon. They consisted of her stepson, Roland Clark (who died in March, 2004, at
8 approximately 75 years of age) and his children and grandchildren. Mrs. Clark's caretaker,
9 Charles Cook, lived near her Ojai home (at the "Frye ranch" in Ojai, one of Mrs. Clark's
10 properties which Cook managed). Mrs. Clark had health issues, and Mr. Cook assisted with Mrs.
11 Clark's personal care, her daily activities, and the maintenance of her properties.

12 Mrs. Clark's Assets

13 14. Mrs. Clark was the income beneficiary of her mother's trust (Elizabeth Black
14 Trust or EB Trust), from which Mrs. Clark received approximately \$200,000 in income per
15 annum.⁵

16 15. Mrs. Clark was also the trustee and beneficiary of her late husband's trust (Roger
17 Clark Trust or RC Trust).⁶ After her husband's death, she also established, and revised several
18 times, a trust in her name, referred to herein as the Louise Black Clark Trust or the LBC Trust.

19 16. Bank Accounts. Mrs. Clark had at least three checking accounts (Integra
20 Bank/National City Bank of Pennsylvania #47888; Bank of America #01971-00767; and
21 BankOne #121986), as well as a checking account in the name of the RC Trust (Bank of America
22 #01971-00607). All of these accounts were used for business and personal purposes during the
23 time periods relevant herein.

24
25 5. Mrs. Clark did not have access to the corpus of the trust, although the corpus could be
26 invaded for Mrs. Clark's benefit in certain circumstances, as determined by the EB Trust
trustees in Pennsylvania.

27 6. Edward Stonie, Mrs. Clark's former CPA, was a successor co-trustee for the RC Trust,
28 and was compensated, *as a trustee*, until his death. (See also paragraph 12 regarding Mr.
Stonie's role.)

1 17. Brokerage Accounts. In addition to Mrs. Clark's individual account (#216-
2 120956) at Donaldson Lufkin & Jenrette (DLJ),⁷ two additional accounts, for the Louise Black
3 Clark Trust (#216-126631) and the Roger Clark Trust (#216-120949), were established at DLJ in
4 1995. These accounts replaced accounts at Paine Webber which were the subject of a lawsuit
5 and settlement in or around 1994 and 1995.⁸ Mrs. Clark's net recovery from the lawsuit
6 (payable to the Louise Clark Trust and to the Roger Clark Trust) amounted to approximately
7 \$2,462,769.00, and was paid into her DLJ account on May 22, 1995. Respondent was
8 authorized to act for Mrs. Clark in each of her DLJ accounts. Respondent could authorize
9 transfers between the accounts, and withdrawals could be made by check from these accounts.

10 18. Mrs. Clark's Property. In addition to her residence at 717 Country Club Drive
11 (and her personal and tangible property), Mrs. Clark owned other real estate, including
12 commercial property, in and around Ojai.⁹ The properties included:

- 13 a. Frye Ranch: approximately 20 acre orange grove/ranch (business) and
14 house (separate residential rental) in Ventura County.
- 15 b. Liquor store and Fotomat kiosk on West Ojai Avenue (commercial rentals)
16 and parking lot, and adjacent vacant lot.
- 17 c. Carrow's Restaurant building - 211 Ojai Ave (commercial rental with
18 profit participation).
- 19 d. 208 Topa Topa Drive (residential rental).

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22 _____
23 7. DLJ has subsequently merged with Credit Suisse First Boston (USA), Inc.

24 8. Mrs. Clark was represented in the lawsuit by Jeffrey R. Richter and John J. Waller, Jr.
25 of the law firm of Walter, Finestone & Richter ("WFR firm"), to which she had been referred
26 for this purpose in late 1994 or early 1995 by Respondent (who leased office space from, and
shared a common reception area with, the WFR law firm).

27 9. Mrs. Clark owned an outright 50% interest in the properties, and the remaining 50%
28 was owned by the RC Trust, established by her late husband, of which she was the trustee and
lifetime beneficiary.

Respondent's Professional Services

19. Respondent's Practices Regarding Mrs. Clark's Records. According to Respondent, Mrs. Clark's home contained an office where financial documents were kept. Respondent also kept many of Mrs. Clark's records at *his* home or office.¹⁰ Respondent traveled regularly from the Los Angeles area to Ojai to meet with Mrs. Clark personally to perform his services, usually on weekends and usually spending part of the weekend at the Ojai Valley Inn & Spa at Mrs. Clark's expense. Mrs. Clark's eyesight was severely compromised, so Respondent reviewed the mail with Mrs. Clark and prepared checks and typed other documents for her signature. Respondent frequently read or summarized a document to Mrs. Clark and then had her sign it or a related document or check. Respondent added notations in the memo area on some checks after they had cleared the financial institution on which they were drawn. Respondent had complete access to Mrs. Clark's checks, accounts, and all her financial information. No one else was given that access.

20. Respondent acted as Mrs. Clark's accountant, tax preparer, and business manager during their professional relationship. He provided bookkeeping and tax return services, at the outset of their relationship, and asserts that he assumed increasingly significant responsibilities over time. He managed her brokerage accounts, and asserts that he helped her manage her business and properties. He had signatory authority and power of attorney for at least some of her bank accounts. As part of her 1995 estate planning revisions (discussed in greater detail below), he was named her "attorney-in-fact" for health care decisions, successor co-trustee of her trust and co-executor of her trust. In 1997, he was made a principal beneficiary of her trust (as were his family members). Respondent came to consider himself as Mrs. Clark's "close friend."

21. Mrs. Clark's Estate Plan.

1994 Revisions. On September 23, 1994, Mrs. Clark revised her will, executing the

10. Among documents found in several boxes of Mrs. Clark's records which were kept by Respondent at his home and which were in his possession as late as 2003 were a power of attorney signed in blank and original copies of Mrs. Clark's wills and superceded wills.

1 Louise Black Clark Revocable Intervivos Trust Number Two, again naming herself as trustee,
2 providing that her personal property was part of the trust corpus, and adding Respondent as one
3 of two successor co-trustees.¹¹ Bequests to Respondent and his wife, Juliet Zita, were added:
4 they joined almost fifty individuals receiving bequests of \$10,000.00.¹²

5 1995 Revision. No later than in or about December 1994, approximately *three* months
6 after the 1994 revisions, Respondent initiated discussions with William Finestone at the WFR
7 law firm¹³ regarding Mrs. Clark's estate plan. Revisions to the estate plan, executed early in
8 1995, placed Mrs. Clark's interest in the real property (the RC Trust shared ownership of the real
9 property) and her other assets, including the brokerage account, under one trust, and appointed
10 (again) Roland Clark and Respondent as successor co-trustees.¹⁴ Among the cash bequests were
11 increased bequests of \$20,000.00 each to Respondent and his wife, Juliet Zita. Mrs. Clark
12 contemporaneously executed a number of related documents. Among them were a Special
13 Power of Attorney naming Respondent as Mrs. Clark's attorney-in-fact and a Bill of Transfer
14 purporting to transfer to the Louise Black Clark Trust all her claims against Paine Webber and all
15 interest in her DLJ account, as well as all of her personal property.

16 1997 Revision. Amendments to Mrs. Clark's estate plan made in or about April 1997
17 made significant changes to the estate in favor of Respondent, providing that Mrs. Clark's home,
18 all personal belongings and tangible property at her home, and other real property which had
19 been previously gifted to Roland Clark (the liquor store and Fotomat kiosk rentals on West Ojai
20

21 11. The other co-trustee added was Roland Clark, Mrs. Clark's stepson and heir.

22 12. After the cash bequests, including a \$25,000.00 cash bequest to a charity, the
23 remainder of the trust assets (excluding real property) was to be divided among a number of
24 charities.

25 13. This was the firm from which Respondent leased and shared office space, the same
firm as that involved in the Paine Webber recovery. See footnote 8 above.

26 14. The trust provided, as before, that Mrs. Clark's interest in the real property, as well as
27 her personal property and furnishings, go to Roland Clark -- her stepson -- and his offspring.
28 (They were also the beneficiaries of Mrs. Clark's deceased husband's trust, the RC Trust, which
owned the remaining 50% of the real properties. See footnote 9.)

1 Avenue, the parking lot, and the adjacent vacant lot), were instead to be gifted to Respondent and
2 his wife. The amendment also provided for specific cash bequests of \$15,000.00 each to
3 Respondent, his wife, and their child, Roland Brandon Zita, and confirmed Respondent as the co-
4 executor and co-trustee (with Roland Clark).

5 **Fees and Gifts to Respondent and His Family**

6 22. Respondent maintains that the fees he charged each year for tax return preparation
7 were "fixed" at \$18,750.00 for preparation of Mrs. Clark's personal tax return and at \$12,450.00
8 for preparation of the RC Trust tax return, with the possible exception of an increase in 1995 for
9 the preparation of the RC Trust tax return (for the tax year 1994).

10 23. Respondent also collected fees for his non-tax-preparation services - beginning
11 with \$4,500.00 on a quarterly basis, then increasing in amount or frequency or both, sometimes
12 paid on a monthly or even more frequent basis. He described these services as reading the mail,
13 preparing the checks, making telephone inquiries about financial matters, assisting in the
14 management of properties, etc. Most or all of this work was performed during Respondent's
15 weekend visits to Mrs. Clark.

16 24. Respondent's fees were paid primarily by check from Mrs. Clark's checking
17 accounts throughout the period. In addition, a transfer of \$500,000.00 was made between Mrs.
18 Clark's DLJ brokerage account and Respondent's DLJ brokerage account.¹⁵

19 25. As set forth more particularly below, checks and bank transfers from Mrs. Clark's
20 accounts during the time period reflect, at a minimum, the following amounts in monetary gifts
21 and fees to Respondent¹⁶ or his fiancé/wife:

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23 //

24 15. At or around the time Mrs. Clark's DLJ accounts were created in May 1995,
25 Respondent opened his own account at DLJ.

26 16. Respondent's sworn testimony or representations constitute the basis of the
27 categorization of monies as professional fees, or gifts, respectively, as set forth in this
28 Accusation. Sometimes the checks themselves were annotated regarding the purpose of the
payment. Some of the checks were annotated by Respondent after they had cleared the bank.

	Gifts	Fees	Total
1993 (6 mos)	\$ 1,757.72	\$ 48,700.00	\$ 50,457.72
1994	60,000.00	44,700.00	104,700.00
1995	94,000.00	585,250.00	679,250.00
1996	125,000.00	56,900.00	181,900.00
1997	120,000.00	70,950.00	190,950.00
1998 ¹⁷ (approx. 10 mos)	77,000.00	80,500.00	157,500.00
	<u>\$477,757.72</u>	<u>\$887,000.00</u>	<u>\$1,364,757.72</u>

26. Fees for Professional Services. According to Respondent, and as evidenced by checks drawn on Mrs. Clark's accounts (and in at least one case a transfer from Mrs. Clark's brokerage trust account to his brokerage account), Respondent was compensated at least **\$887,000.00** during a 5½ year period for his professional services to her, as follows:

a. 1993 (Six month period, beginning June 18): \$48,700.00. Among the payments were checks for \$18,750.00 for preparation of Mrs. Clark's personal tax return and \$12,450.00 for preparation of the RC Trust tax return, as well as three checks for \$4,500.00 identified after the fact by Respondent as quarterly retainers, as well as an additional payment of \$4,000.00 to him for unspecified services.

b. 1994: \$44,700.00. The payments included checks for \$18,750.00 for preparation of Clark's personal tax return, \$12,450.00 for preparation of the RC Trust tax return, and other checks identified after the fact by Respondent as three quarterly retainers of \$4,500.00 each.

c. 1995: \$585,250.00, including charges identified by Respondent as representing payments for monthly, rather than quarterly, services; a year-end bonus of \$10,000.00 (for 1994; dated January 8, 1995); \$18,750.00 for preparation of Mrs. Clark's personal tax return, as well as an apparent "increase" (from \$12,450.00 to \$15,000.00) for preparation of the RC Trust tax return; a brokerage account transfer of \$500,000.00,¹⁸ and other

17. The last check was drawn on November 2, 1998, the date on which Respondent last visited, and last had any contact with, Mrs. Clark.

18. This transfer from Mrs. Clark's brokerage trust account to Respondent's brokerage account occurred on or about May 28, 1995, a few months after her accounts were established.

1 payments for unspecified purposes:

2 d. 1996: \$56,900.00, including sums identified by Respondent totaling a
3 probable \$30,900.00 in fees for tax return preparation.

4 e. 1997: \$70,950.00. Among the payments were nine checks in the amount
5 of \$5,000.00 each, many of which were for unspecified purposes, and fees of at least \$29,950.00
6 for tax return preparation.

7 f. 1998: \$80,500.00. Among the payments were eleven checks in the
8 amount of \$5,000.00 each, and tax return preparation fees of at least \$25,000.00.

9 27. Gifts to Respondent and His Family. In addition to the professional fees
10 described above, Respondent claims that substantial sums were gifted to him, his wife (Juliet
11 Cava Zita), and his child (Roland Brandon Zita) by Mrs. Clark during his tenure as Mrs. Clark's
12 CPA. With rare exceptions, Mrs. Clark's "intent" to gift these sums is evidenced, in the main,
13 only by the canceled checks, by memo entries entered by Respondent on the check in question
14 after it had cleared the bank. In some cases, the "intent" to gift is noted by check register entries
15 made by Respondent. Any contemporaneous accounting, or schedules of the amounts or
16 purposes of the gifts, are incomplete.

17 28. The following checks, characterized by Respondent as gifts to him or his wife or
18 child, were drawn on Mrs. Clark's accounts, totaling \$477,757.72, as follows:

19 a. 1993 (Beginning June 18): \$1,757.72, including a \$1000.00 annotated
20 "Merry Xmas" which appears to be written in Mrs. Clark's handwriting; and two checks of
21 \$378.86 annotated as "Reimb. Ck Writer RZ for JZ" and "Reimb. Ck Writer LBC."

22 b. 1994: \$60,000.00, including a Christmas bonus of \$10,000.00, birthday
23 gifts of \$5,000.00 each to Respondent and Juliet Cava (then Respondent's fiancé); and a
24 \$40,000.00 wedding gift.

25 c. 1995: \$94,000.00. Among these payments were checks in the amounts
26 of \$50,000.00 for a new car,¹⁹ \$10,000.00 for a trip for Respondent and his wife to Italy;

27
28 19. The check was from brokerage account.

1 \$1,000.00 each to Respondent and his wife, Juliet Zita as Thanksgiving gifts; \$5000.00 as a
2 birthday gift to Respondent; and checks totaling an additional \$9,000.00 in gifts to Juliet Zita, as
3 well as additional gifts to Respondent totaling \$8,000.00.

4 d. 1996: \$125,000.00, including a \$10,000.00 Valentine's Day gift;
5 \$5,000.00 each to Respondent and Juliet Zita, later attributed by Respondent to the fact that Mrs.
6 Zita was having a difficult pregnancy; an additional \$35,000.00 in gifts to Mrs. Zita (for birthday,
7 anniversary, or unspecified occasions); two separate \$5,000.00 birthday checks, from different
8 accounts, to Respondent; and additional gifts to Respondent totaling \$60,000.00.

9 e. 1997: \$120,000.00, including a \$2,000.00 gift to Respondent to celebrate
10 Mrs. Clark's birthday; a \$10,000.00 check to Respondent for his wife's birthday; \$10,000.00 for
11 Respondent's infant son; \$5,000.00 to buy the Zitas an air conditioner; \$68,000.00 in additional
12 gifts to Mrs. Juliet Zita, including a check for \$50,000.00 (annotated by Respondent as
13 "Bus.Loan/Gift"), which, according to Respondent, was intended by Mrs. Clark to entice Mrs.
14 Zita to quit working and start a business,²⁰ and additional gifts to Respondent totaling an
15 additional \$25,000.00.

16 f. 1998: \$77,000.00, including \$27,000.00 made payable to Juliet Zita for
17 various purposes (including Happy Easter, Mother's Day, son's birthday, and gift to son);
18 \$20,000.00 for Respondent's father's burial expenses; \$5,000.00 to Respondent for Valentine's
19 Day and \$5,000.00 for Father's Day, as well as additional gifts totaling \$20,000.00.

20 29. Respondent also claimed that Mrs. Clark gave, to him and his wife, Mrs. Clark's 6-
21 carat diamond ring in 1994 (the year they were married). Respondent has offered, as evidence of
22 this "1994 gift," a letter, purportedly signed by Mrs. Clark on November 2, 1998, the last day
23 Respondent had any contact with her.²¹

24 30. Termination of CPA Relationship. Respondent's services were terminated by
25

26
27 20. The "loan" was made from the brokerage account.

28 21. The value of this ring, received by Mrs. Clark from her husband, is not figured into
these "gift" estimated totals.

Mrs. Clark in late 1998, shortly before her 93rd birthday. Her inadvertent discovery, with the assistance of her caretaker Mr. Cook, on or about November 26, 1998, during a period when Respondent was unavailable to her, of a handful of checks totaling \$35,000.00 (drafted on October 4 and November 1 and 2, 1998) and made payable to Respondent or his wife, raised Mrs. Clark's suspicions and ultimately led to Respondent's dismissal. The checks were as follows:

<u>Check</u>	<u>Payee</u>	<u>Amount</u>	<u>Date</u>	<u>Purpose</u>
#895	Roland Zita	\$10,000.00	Oct. 4, 1998	Fee partial for personal tax return preparation
#5550	Roland Zita	\$8,000.00	Oct. 4, 1998	Fee partial for personal tax return preparation
#906	Roland Zita	\$5,000.00	Nov.1, 1998	
#913	Roland Zita	\$5,000.00	Nov.2, 1998	"Happy Birthday"
#5566	Juliet Zita	\$5,000.00	Nov.2, 1998	"Juliet 5,000"
#5567	Juliet Zita	\$2,000.00	Nov.2, 1998	"His Nib's Brandon"

The discovery of these six checks²² precipitated an inquiry by Mrs. Clark and her agents which revealed the scope of Respondent's unauthorized, unknown, and/or self-interested activities and transactions which inured to his personal financial benefit, and that of his family members, and to the detriment of Mrs. Clark.

31. She and her agents terminated the CPA-client relationship. Respondent had no contact with Mrs. Clark after last seeing her in person on November 2, 1998. Her estate plan was redrafted in December, 1998. Mrs. Clark sued Respondent in *Louise Black Clark v. Roland Zita, Juliet Zita, Roland Zita Corp.*, Los Angeles County Superior Court, Central District, and the parties reached a settlement. Mrs. Clark died on November 21, 2001.

BREACHES OF FIDUCIARY DUTY

Breach of Fiduciary Duty of Any Kind - Bus. & Prof. Code § 5100(i)

32. Complainant realleges paragraphs 12 through 31, above, and incorporates them

22. The final three checks appeared to be drafted on November 2, 1998, the last time Mrs. Clark had seen Respondent.

1 herein by reference as if fully set forth at this point. Additional circumstances follow.

2 33. Respondent's Fiduciary Duty to Mrs. Clark. Respondent had a confidential
3 and fiduciary relationship with Mrs. Clark, occupied a position of trust, and owed her a fiduciary
4 duty. Respondent's specific duties included such things as categorizing income and expenses for
5 yearly accounting and tax work, preparing cash disbursements, reconciling bank accounts, and
6 maintaining accounting records. He managed the checking accounts and wrote checks. During
7 the relationship, Respondent became involved in every aspect of Mrs. Clark's financial affairs.
8 He became, by his own description, her accountant, tax preparer, business manager and "close
9 friend," and he acted as her financial advisor and personal representative or agent in a variety of
10 circumstances. In September 1994, Respondent became a co-trustee of her trust. Mrs. Clark
11 reposed a special trust and confidence in Respondent, and she relied upon him to act in her best
12 interest.

13 34. Respondent used his position and influence with Mrs. Clark to his financial
14 advantage and to her detriment. Respondent's dealings with Mrs. Clark lacked the indicia of
15 care, candor, and loyalty which he owed her as her fiduciary. He had considerable influence on
16 Mrs. Clark, took advantage of her age and circumstances²³ and his position of trust, and used
17 suspect practices in dealing with her assets.

18 35. Respondent breached his duty as Mrs. Clark's fiduciary when he:

19 A. Accepted a \$40,000.00 "wedding gift" in early August 1994 (see paragraph 28
20 above), days after arranging for Mrs. Clark to borrow \$50,000.00 against her (mother's) EB Trust
21 income.

22 B. Improperly allocated the \$2,462,769.00 recovery from the Paine Webber
23 lawsuit.²⁴ The improper allocation by Respondent among the trusts for which Mrs. Clark was the

24
25 23. Mrs. Clark's vision was impaired and she had physical conditions which severely
26 limited her mobility.

27 24. Mrs. Clark's recovery from the lawsuit came in two parts: from the first
28 \$1,600,000.00 portion, attorneys' fees of \$533,333.00 were paid to the WFR firm, netting
\$1,066,667.00. This amount was correctly allocated, \$941,227.00 to the LBC Trust account
and \$125,440.00 to the RC Trust account on May 22, 1995. However, the second part of the

1 trustee impacted the beneficiaries of the RC Trust, of which Mrs. Clark was the principal
2 beneficiary. Respondent's misallocation of the amounts resulted in obfuscating the impact of his
3 \$500,000.00 transfer from Mrs. Clark's trust account to his own account. Respondent's
4 misallocation of the amounts resulted in more monies being in the LBC trust account, for which
5 trust he had been appointed co-executor, co-successor trustee, and beneficiary.

6 C. Failed to create accountings, contemporaneous records, or other independent
7 indicia of Mrs. Clark's intentions in re: transfers and checks from Mrs. Clark's accounts for
8 Respondent's personal benefit, including sums from her trust accounts for which he served as co-
9 trustee. Because there was no accounting provided, the trustee, Mrs. Clark, was not able to
10 protect her interests or discharge her duty as trustee.

11 D. Failed to prepare gift tax returns for her (as is more fully set forth in paragraphs
12 48ff. below). This conduct breached his fiduciary duty toward her and compromised her
13 interests, in part because it subjected her to potential additional taxes and penalties and because it
14 obfuscated the true amounts of money "gifted" to Respondent and his family, as there were no
15 other records or accountings which aggregated these amounts (thus breaching his duty of candor
16 to Mrs. Clark).

17 E. Posed as a psychic in communication with Mrs. Clark's deceased husband, writing her
18 letters to influence her to continue relying on him and to distrust others.

19 36. Incorporating by reference the matters set forth in paragraphs 32 through 35,
20 Respondent's conduct constitutes multiple instances of the breach of his fiduciary duty toward
21 Mrs. Clark, which is unprofessional conduct within the meaning of Code section 5100(i).

22 37. Incorporating by reference the matters set forth in paragraphs 32 through 35,
23 Respondent's conduct constitutes multiple instances of general unprofessional conduct within the

24 _____
25 recovery, in the amount of \$1,396,102.00 (which did not result in additional attorneys fees),
26 was not correctly apportioned. The RC Trust account was due \$209,841.00 of the total.
27 However, the full recovery, rather than being apportioned between the trusts, was first briefly
28 deposited in the LBC Trust account (on May 22, 1995), then transferred to the RC Trust
account on May 24, 1995, then transferred back to the LBC Trust account on July 6, 1995. This
last transfer occurred after Respondent had transferred \$500,000.00 from the LBC Trust
account to his own brokerage account at DLJ, as set forth in paragraph 24 above.

1 meaning of Code section 5100.

2 **CONFLICT OF INTEREST**

3 **Board Rule 57/Bus. and Prof. Code Section 5100(g)**

4 38. Incorporating by reference the matters alleged in paragraphs 32 through 35,
5 Respondent's conduct violated his duty to remain free of conflicts of interest with Mrs. Clark, in
6 violation of Board Rule 57, constituting instances, and a pattern, of conflict of interest between
7 his own interests and those of his client. Respondent's conduct constitutes unprofessional
8 conduct under Code Section 5100(g)(willful violation of a Board rule or regulation).

9 39. Incorporating by reference the matters alleged in paragraphs 32 through 35,
10 cause for discipline of Respondent's licenses is established in that said misconduct constitutes
11 general unprofessional conduct within the meaning of Business and Professions Code section
12 5100.

13 **FILING FALSE INCOME TAX RETURN**

14 **Fiscal Dishonesty - Bus. and Prof. Code Sections 5100(i)** 15 **and** 16 **Knowing Preparation and Dissemination** 17 **of False and Fraudulent Financial Information** 18 **- Bus. and Prof. Code Section 5100(j)**

19 40. Complainant realleges paragraphs 23 through 26 and 35.B., above, and
20 incorporates them herein by reference as if fully set forth at this point. Additional circumstances
21 follow.

22 41. Respondent asserts that the \$500,000.00 which was transferred in May 1995 from
23 Mrs. Clark's brokerage trust account to his own brokerage account was compensation for work
24 he performed in litigation support. However, Respondent prepared and caused to be filed his
25 own income tax return for the tax year 1995 which did not report as income the \$500,000.00
26 which he claimed to be a professional fee earned in connection with his assistance to Mrs. Clark
27 in the settlement of the Paine Webber lawsuit.

28 42. Respondent's conduct as set forth in paragraphs 40 and 41, above, constitutes
fiscal dishonesty, which is unprofessional conduct within the meaning of Code section 5100(i).

43. Respondent's conduct in preparing his tax return, as set forth in paragraphs 40 and

1 41, above, constitutes the knowing preparation of false and/or fraudulent financial information,
2 which is unprofessional conduct within the meaning of Code section 5100(j).

3 44. Respondent's conduct in filing his tax return, as set forth in paragraphs 40 and 41,
4 above, constitutes the knowing publication or dissemination of false and/or fraudulent financial
5 information, which is general unprofessional conduct within the meaning of Code section
6 5100(j).

7 **RESPONDENT'S POSING AS PSYCHIC TO MRS. CLARK**

8 **Unprofessional Conduct - Bus. and Prof. Code § 5100**

9 45. Complainant realleges the matters alleged in paragraphs 12, 13, 20, and 33
10 through 35, above, and incorporates them herein by reference as if fully set forth at this point.
11 Respondent's conduct, posing, in letters to Mrs. Clark, as a psychic sent from Mrs. Clark's dead
12 husband, constitutes general unprofessional conduct within the meaning of Code section 5100
13 and constitutes cause for discipline of Respondent's licenses.

14 **FAILURE TO CREATE AND MAINTAIN** 15 **ADEQUATE ACCOUNTING RECORDS**

16 **Unprofessional Conduct - Bus. and Prof. Code § 5100**

17 46. Complainant realleges the matters in paragraphs 12 through 35, above, and
18 incorporates them herein by reference as if fully set forth at this point.

19 47. Respondent's licenses are subject to discipline in that he failed to prepare
20 adequate accounting and other financial records for Mrs. Clark and for the Roger Clark Trust,
21 although he was paid to do so. The documents maintained in the Respondent's tax files for
22 preparation of the 1995 to 1997 tax returns are incomplete. There are no adequate accountings,
23 financial statements, records of loans and gifts, or like documents prepared by Respondent.
24 There exist no reconciliations of Mrs. Clark's assets, including cash balances. Without these
25 basic accounting records, Mrs. Clark could not be fully informed of her financial situation,
26 including her tax liabilities and the scope of the payments and gifts to the Respondent and his
27 family.

28 48. Incorporating by reference the matters asserted in paragraphs 46 and 47, cause for

discipline of Respondent's licenses is established in that said misconduct constitutes general unprofessional conduct within the meaning of Business and Professions Code section 5100.

INCOME TAX RETURN PREPARATION

Failure to Comply With Professional Standards Rule 58/Bus. & Prof. Code Section 5100(g) and Unprofessional Conduct - Bus. & Prof. Code Section 5100

49. Complainant realleges paragraphs 12 through 35 and 47, above, and incorporates them herein by reference as if fully set forth at this point.

Failing to File Gift Tax Returns

50. The tax returns prepared for Mrs. Clark and RC Trust during each tax year from 1994 through 1997,²⁵ while the licensee was the tax preparer, did not include gift tax returns which would reflect the significant amounts which Respondent claims were gifted to him and his family during that time period. The cash gifts to Respondent and his immediate family exceeded the limits for non-taxability of gifts (\$10,000.00 per individual per year). The amounts described as gifts by Respondent are as follows:

	Total Cash Gifts To/On Behalf Of:			Total in Excess of Annual \$10,000 Limit:
	<u>Roland Zita</u>	<u>Juliet Zita</u>	<u>Brandon Zita</u>	<u>Amount Above Limit</u>
1994	\$35,000	\$25,000	N/A	\$ 40,000
1995	\$84,000	\$10,000	N/A	74,000
1996	\$75,000	\$45,000	\$ 5,000	100,000
1997	\$32,000	\$78,000	\$10,000	<u>90,000</u>

Amount which would be used against estate exemption of \$600,000.00 (at that time) had timely filed gift tax returns been filed:

Total: \$ 304,000

The tax file schedules, or other records created or maintained by Respondent, do not

25. Although there were alleged cash gifts exceeding the non-taxability limits in 1998, the licensee was not engaged to prepare 1998 tax returns due to his dismissal in December 1998.

1 include any record, or accounting, of gifts, distributed from Mrs. Clark's funds, as relevant to his
2 preparation of her taxes, from 1994 through 1997.

3 51. Respondent's conduct as set forth in paragraphs 49 and 50, above, constitutes
4 several instances of failure to comply with professional standards, including the violation of
5 applicable Internal Revenue Service tax filing requirements and AICPA Rule 102, and
6 constitutes the violation of Board Rule 58, thereby providing grounds for disciplinary action
7 under Code section 5100(g).

8 52. Respondent's conduct as set forth in paragraphs 49 and 50, above, constitutes
9 general unprofessional conduct within the meaning of Code section 5100.

10 **Failure to Fully Report Professional Fees Paid**

11 53. The tax returns filed for Mrs. Clark under-reported professional fees paid by Mrs.
12 Clark and the RC Trust for professional services, including for Respondent's services. The
13 amounts reported do not include the \$500,000.00 payment to Respondent in 1995 for services in
14 connection with the Paine Webber litigation. There is no indication in Respondent's working
15 papers of reports or accountings which adequately accounted for these fees, sufficient to provide
16 information for Mrs. Clark to be aware of the ramifications and effect on her taxable
17 income/estate (as well as to clearly indicate the amounts paid for his services).

18 54. Respondent's conduct as set forth in paragraph 53, above, constitutes several
19 instances of failure to comply with professional standards, including the violation of applicable
20 Internal Revenue Service tax filing requirements and AICPA Rule 102, and constitutes the
21 violation of Board Rule 58, thereby providing grounds for disciplinary action under Code section
22 5100(g).

23 55. Respondent's conduct as set forth in paragraphs 52 and 53, above, constitutes
24 general unprofessional conduct within the meaning of Code section 5100.

25 **MISAPPROPRIATION OF FUNDS OR PROPERTY, OR OBTAINING** 26 **MONEY, PROPERTY, OR OTHER VALUABLE CONSIDERATION** 27 **BY FRAUDULENT MEANS OR FALSE PRETENSES**

28 **Business and Professions Code Sections 5100(k)**

56. Complainant realleges paragraphs 40 and 41, above, and incorporates them herein

1 by reference as if fully set forth at this point.

2 57. \$500,000.00 Fee. Respondent's conduct regarding the \$500,000.00 he
3 transferred in 1995 from Mrs. Clark's brokerage account to his own account constitutes the
4 misappropriation of property, and/or the obtaining of property by fraudulent means or false
5 pretenses, which is unprofessional conduct within the meaning of Code section 5100(k).

6 58. Diamond Ring. Respondent's possession of Mrs. Clark's diamond ring, as set
7 forth in paragraph 29 above, constitutes embezzlement, theft, and/or the misappropriation of
8 property, and/or the obtaining of property by fraudulent means or false pretenses, which is
9 unprofessional conduct within the meaning of Code section 5100(k).

10 **PRACTICE WITHOUT VALID PERMIT**

11 **Unlicensed Practice - Bus. & Prof. Code Sections 5156/5050/5051/5100(g)**

12 59. Complainant realleges paragraphs 3 and 12, and incorporates them herein by
13 reference as if fully set forth at this point. Complainant alleges that Respondent has practiced
14 under his corporate permit within the meaning of Code sections 5050 and 5051 during the period
15 from July 1, 1998 to July 1, 2001.

16 60. Cause for discipline of Respondent's licenses exists in that he practiced under his
17 corporate license while his license was expired and therefore not valid, from July 1, 1996 to
18 March 18, 1998, and again from July 1, 1998 to July 1, 2001.

19 **DISCIPLINE OF CORPORATE PERMIT**

20 **Unprofessional Conduct - Bus. & Prof. Code Section 5156**

21 61. Incorporating by reference all causes for discipline pled herein, Respondent's
22 corporate permit is subject to discipline, under Code section 5156 in conjunction with Code
23 section 5100, for each and for all of the causes alleged.

24 **OTHER MATTERS**

25 62. Pursuant to Code section 5107, it is requested that the administrative law judge, as
26 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all
27 reasonable costs of investigation and prosecution in this case, including, but not limited to,
28 attorneys' fees.

63. It is charged, in aggravation of penalty, that at all times material to Respondent's misconduct described above, his client was an elderly person within the meaning of the Elder Abuse Act. Respondent exercised undue influence on Mrs. Clark by virtue of his position as her trusted CPA. Respondent's recordkeeping was woefully inadequate, and it had the deleterious effect of compromising Mrs. Clark's ability to understand her financial situation and transactions. In addition, Respondent's client's age and physical limitations made her particularly susceptible to financial abuse. Respondent's breaches of fiduciary duty were numerous, increasing and continuing over the duration of his professional relationship with Mrs. Clark.

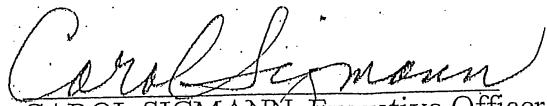
64. Code section 5000.1 is relevant to the penalty determination in this matter.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

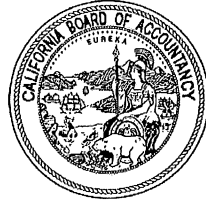
1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Certificate Number 57042, issued to Roland Zita;
2. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Corporate Permit Number 3929, issued to Roland Zita Certified Public Accountant A Professional Corp;
3. Ordering Roland Zita to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code Section 5107;
4. Taking such other and further action as deemed necessary and proper.

DATED: July 25, 2006


CAROL SIGMANN, Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250
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**GUIDELINES FOR
UNLICENSED FORMER LICENSEES
OF THE CALIFORNIA BOARD OF ACCOUNTANCY**

When your CPA or PA license had expired, been canceled, or revoked, you may no longer practice as a Certified Public Accountant or Public Accountant in this State.
Further:

- 1) You may not use the title CPA, PA or other titles or indicia which would tend to indicate that you are licensed by this Board. In addition, you may not engage in any advertising which uses terms such as "accountant", "accounting" or "accounting services" unless your "use of those terms is further qualified by an explanation, disclaimer or warning stating that the advertiser is not licensed by the state, or that the services being rendered do not require a state license...."
Moore v. State Board of Accountancy (1992) 2 Cal. 4th 999 at p. 1023.
- 2) You may perform bookkeeping and other services as may be performed by Unlicensed persons. (Business and Professions Code Section 5052)
- 3) Your participation as a principal in a partnership or an officer or shareholder of a professional accountancy corporation must cease during your unlicensed period. You may not share professional fees or have any form of ownership of a professional practice such as a partnership interest or hold shares of a professional accountancy corporation. You may work as an employee of a licensed Certified Public Accountant or Public Accountant or you may work for private industry in an unlicensed capacity. (See Business and Professions Code Sections 5051, 5052, 5053.)

COPY OF BUSINESS AND PROFESSIONS (B & P) CODE SECTION 119 (a)-(f)
PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 5104

Licensure Offenses

119. Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

(Amended by Stats. 1989, Ch. 1207.)

Relinquishment of Certificate or Permit

Section 5104. Any certified public accountant or public accountant whose certificate, registration or permit has been canceled, revoked, or suspended shall upon request of the board relinquish his certificate or permit; provided, however, that upon the expiration of the period of suspension the board will immediately return any suspended certificate or permit which has been relinquished.

HISTORY: Added Stats 1955 ch 1803 Section 10 as Section 5105; Renumbered Stats 1959 ch 310 Section 71.

Former Section: Former Section 5104 was added by Stats 1945 ch 1353 Section 2, amended by Stats 1947 ch 502 Section 3, and renumbered Section 5103 and amended by Stats 1959 ch 310 Section 70.

California Business and Professions Code

Petition for Reinstatement or Reduction of Penalty

Section 5115

- (a) A person whose license has been revoked or surrendered may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition, unless a longer period, not to exceed three years, is specified by the board in any decision revoking the license, accepting the surrender of the license, or denying reinstatement of the license.
- (b) A person whose license has not been revoked or surrendered but who has been disciplined by imposition of a suspension or otherwise disciplined may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision.
- (c) The board shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the board itself. The board itself shall rule on the petition, and the decision shall include the reasons therefor and any terms and conditions that the board reasonably deems appropriate to impose as a condition of reinstatement or reduction of penalty, including, but not limited to, restrictions on the petitioner's scope of professional practice.